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February 25, 2005

Via Hand Delivery

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

DOCKET NO.

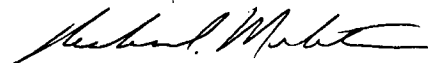
05-00062

Re: Petition for a Declaratory Ruling

Dear Chairman Miller:

King's Chapel Capacity files the attached Petition for a Declaratory Ruling Regarding the Assignment of Wastewater Service Territory to Private Utilities in Tennessee Please contact me should you have any questions

Sincerely,
MILITANA & MILITANA



Richard Militana, Esquire

RM/dkm
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF KING'S CHAPEL
CAPACITY, LLC, FOR A DECLARATORY
RULING REGARDING THE ASSIGNMENT
OF WASTEWATER SERVICE TERRITORY
TO PRIVATE UTILITIES IN TENNESSEE

DOCKET NO. 05-_____

PETITION FOR A DECLARATORY RULING

Comes now, King's Chapel Capacity, LLC ("KCC" or "Company") and respectfully requests the Tennessee Regulatory Authority ("TRA" or "Authority") to issue a declaratory order pursuant to T.C.A. § 65-2-104, T.C.A. § 4-5-223 and TRA Rule 1220-1-2-.06 ruling that the TRA's previous orders granting wastewater service territories through Certificate's of Convenience & Necessity ("CCN") to various providers only applies to the developments and territory actually being served, and not to any presently unserved area where treatment and distribution facilities have not been placed in service by the utility. In support of this Petition and KCC's contention that a TRA CCN is not effective until utility treatment and distribution plant has been placed in service and customers are being served, the Company states the following.

- 1 Any notices or other communications with respect to this Petition should be sent to the following:

Richard Militana, Esq.
Militana & Militana
5845 Old Highway 96
Franklin, TN 37064

John Powell
King's Chapel Capacity, LLC.
1413 Plymouth Drive
Brentwood, TN 37027

2. KCC is currently seeking to provide wastewater service in Docket 04-00335 to a currently unserved area of the Milcrofton Utility District. Although the TRA has granted a CCN to another wastewater utility to serve the Milcrofton Utility District territory, no distribution facilities have yet been placed in service by this wastewater utility
3. KCC also plans to seek future authority from the TRA to provide wastewater services in Williamson County and other locations throughout Tennessee. However, KCC has discovered that the TRA has already granted CCNs to other utilities to provide these wastewater services although no treatment or distribution facilities have yet been placed in service by these providers. KCC maintains that this practice of reserving territory until a need arises by other wastewater utilities is thwarting competition and not in the best interest of the consumers of Tennessee
4. On February 4, 2005, the Hearing Officer entered an order in Docket 03-00329, which has not been appealed, regarding the Petition of Tennessee Wastewater Systems, Inc. ("TWS") to expand its service area to include an area known as Sevier County. In this Order, the Hearing Officer denied TWS's petition for a blanket grant of territory by the TRA to provide wastewater service to the currently unserved area of Sevier County. As noted by the Hearing Officer, such a grant of authority "would hinder the TRA's ability to . . . consider the impact of Company systems . . . because the countywide CCN would obviate the need for subsequent petitions for individual

systems within the county”¹ The Hearing Officer then went on to state the following.

The Hearing Officer finds that the grant of a countywide CCN would result in a bypass of an important regulatory requirement for the Company and at the same time automatically impose additional statutory and administrative requirements on other public utilities seeking to offer service in Sevier County. Any public utility seeking a certificate to offer service in the Company’s proposed service area would arguably be in competition with the Company’s system. The effect of granting a countywide CCN would be that all subsequent applicants for certificates in Sevier County would be required to meet the burden of proof set forth in Tenn. Code Ann. § 65-4-201 (2004), as discussed above, and the additional burden of proof required by Tenn. Code Ann. § 65-4-203(a) (2004) which contemplates the presence of an existing system. **The Hearing Officer concludes that the reasonable needs of the public are better served where the first public utility to be authorized by the TRA to extend its service area to a particular location has a present and actual intent to provide service to that location rather than an apparent desire to “lock up” an area or to otherwise remove the area from further regulatory oversight.**² [Emphasis Added.]

- 5 While KCC agrees with the Hearing Officer’s opinion in Docket 03-00329, the scope of this decision should apply Statewide, if it does not already operate to do so. Equal protection under the Fourteenth Amendment to the Constitution of the United States becomes an issue with regard to permitting this condition to exist in other counties in Tennessee. Because KCC plans to invest capital and actually provide wastewater service to territories it obligates itself to do so, outside of Sevier County, that are currently “locked up” by other wastewater providers that have not installed treatment or distribution facilities not agreed to provide capital for wastewater service and have in fact specifically expressed and published a policy not to invest capital in the

¹ TRA Order in Docket 03-00329, February 4, 2005, Page 35

² TRA Order in Docket 03-00329, February 4, 2005, Pages 35-36

³ (intentionally unnamed party and docket number)

building of treatment and distribution facilities in which it enjoys a CCN. KCC is now forced to come before the TRA for global application of the well reasoned ruling in Sevier County, TN or formal adoption of same by the TRA in order to insure and confirm uniformity relevant to such rulings and/or application of policy throughout Tennessee. By way of example, and not by way of limitation, see sworn answers to Interrogatories filed by a "wastewater utility provider" under authority of the TRA within proceedings before the Tennessee Regulatory Authority. Docket No (intentionally omitted) and names (intentionally omitted) to wit:

"5. Please provide a detailed itemization of any and all investments made by (name intentionally omitted) in its wastewater treatment service areas located in (name intentionally omitted), Tennessee."

RESPONSE: As this party understands this interrogatory, it has no investments in wastewater treatment service areas located in (name intentionally omitted), Tennessee because as a matter of operational principle, (name intentionally omitted) does not invest capital to construct wastewater treatment systems.

6 A statewide application of the Sevier County Ruling would remove this type of malignancy and abuse of CCN's and avoidance of legitimate issues surrounding equal protection under the law as provided under the Constitution of the United States and that of Tennessee.

7. By way of actual example, a company ("undisclosed"), based upon the lack of service being provided, receives a CCN, locks up an area thwarting competition, without any intent whatsoever to provide service to that county or area in which it enjoys a Certificate of Convenience and Necessity and, in fact, openly flaunts an "operational principle" of not serving such areas by refusing to invest any capital whatsoever in compliance with its CCN nor to invest any capital to construct wastewater treatment systems in areas in which it enjoys a CCN issued by the Tennessee Regulatory Authority, specifically to serve that area. The response referenced

above was made in December of 2004 under rights provided by an expansion of a Certificate of Convenience and Necessity granted in 1998. In this example the company enjoyed a CCN for over 6 years and has to date has made "no investments in wastewater treatment services in the CCN area in Tennessee". This accents the need for Statewide application of the Ruling in Sevier County, TN to avoid the types of abuses addressed in the Sevier County case and examples referenced herein.

Wherefore, KCC respectfully prays that the Authority issue a declaratory order declaring that the findings of the Hearing Officer relating to service territory in TRA Docket 03-00329 be expanded to include all other territories outside of Sevier County

Respectfully submitted this 25th day of February 2005.

MILITANA & MILITANA

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